

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

Case No. 05-44481RDD

DELPHI CORPORATION, ET AL.,

Chapter 11 (Jointly Administered)

Debtor(s).

Hon. Robert D. Drain

**RESPONSE OF THE STATE OF MICHIGAN, DEPARTMENT OF TREASURY TO
DEBTOR'S TWENTY-FIRST OMNIBUS OBJECTION PURSUANT TO 11 U.S.C.
§502(B) AND FED. R. BANKR.P. 3007 TO CERTAIN (E) UNTIMELY CLAIMS.**

NOW COMES the State of Michigan, Department of Treasury, by and through its attorneys, Michael A. Cox, Attorney General, and Peggy A. Housner, Assistant Attorney General, and responds to Debtor's objection as follows:

1. Debtor, Delphi Corporation, in this 21st Omnibus Objection, has objected to what it identifies as Claim # 16633. This claim was filed on July 30, 2007, in the amount of \$12,954,363.21, by the State of Michigan, Department of Treasury. Debtor asserts that the claim is untimely as it was filed after the court ordered bar date of July 31, 2006.

2. The Michigan Department of Treasury admits that Claim # 16633 was filed on or about July 30, 2007, in the amount of \$12,954,363.21, against Delphi Corporation, Federal Tax Identification Number 38-3430473, but Treasury asserts that this claim was filed as an Amended Priority Tax Claim not as the Original Priority Tax Claim.

3. The Michigan Department of Treasury timely filed its original Priority Tax Claim in this matter against Delphi Corporation on March 23, 2006, in the amount of \$7,061,266.16. This claim was subsequently amended on April 4, 2006, in the amount of \$5,753,354.75; again

on May 16, 2006, in the amount of \$5,731,238.42; and lastly it was amended on or about July 30, 2007, in the present amount (the claim that is now the subject of this objection).

4. The Michigan Department of Treasury has continued to amend and correct the amount of this priority tax claim as the tax assessments listed on the claim have been revised and corrected as the result of the Michigan Single Business Tax and Use Tax Audits that are currently underway between the Michigan Department of Treasury and Delphi.

5. The priority tax claim, as filed in this matter and amended, continues to properly reflect the single business taxes and use taxes owed to the Michigan Department of Treasury as the result of comprehensive tax audits currently underway. The Michigan Department of Treasury has continued to amend this claim as the process has been completed. The use tax audit is scheduled to be completed by December 31, 2007.


6. The Michigan Department of Treasury is allowed to amend its claims, as necessary, pursuant to 11 USC §501, Bankruptcy Court Rules 3001 and 7015, and case law (see *In Re Kolstad v IRS*, 928 F. 2d 171, 1991 US App. Lexis 5858; 91-1 U.S. Tax Cas. (CCH) P50, 190; 67 A.F.T.R. 2d (RIA) 829; Bankr. L. Rep. (CCH) P73, 929; 21 Bankr. Ct. Dec. 904). The Michigan Department of Treasury's amended claim relates back to the original claim; no additional assessments or taxes are included, only the updated audit amounts. No new tax debts have been asserted in the amended claim. The parties should not be surprised, as the amended claim contains all the same tax debts and tax periods and, further, the Debtors have been involved in the Audit process which has resulted in the changed amounts of tax due. Lastly, none of the other creditors will suffer as the result of the State amending its claims, as all have been on notice of the Michigan Department of Treasury claims. The Michigan Department of Treasury's

amended priority claim relates directly back to the original priority tax claim as it relates to tax type, tax period and audit status, that was timely filed in this matter.

WHEREFORE, the Michigan Department of Treasury respectfully requests that its Amended Priority Tax Claim, filed in this matter as Claim # 16633 (against Debtor Delphi Corporation, Tax ID 38-3430473), in the amount of \$12,954,363.21, be allowed and paid as a timely filed and appropriately amended claim.

Respectfully submitted,

MIKE A. COX
Attorney General


/s/ Peggy A. Housner
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